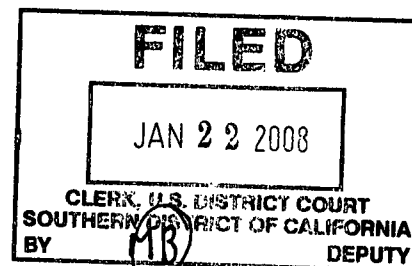


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UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALFREDO LUIS-TENORIO (2),

Defendant.

Criminal Case No. 07CR3162-L

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESSES AND
ORDER THEREON**

(Post-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Eugene S. Litvinoff, Assistant United States Attorney, and defendant ALFREDO LUIS-TENORIO, by and through and with the advice and consent of defense counsel, Candis L. Mitchell, Esq., Federal Defenders of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the disposition date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to Count 1 of the Indictment which charges defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

2. Defendant agrees to plead guilty to the charge described above pursuant to the plea agreement on or before February 11, 2008.

1 3. The material witnesses, Fermin Tapia-Barrera, Avelino Sanchez-Merino, and Roberto
2 Ramirez-Hernandez, in this case:

3 a. Are aliens with no lawful right to enter or remain in the United States;
4 b. Entered or attempted to enter the United States illegally on or about October 21,
5 2007;

6 c. Were found in a vehicle driven by co-defendant Jesus Munoz, Jr. at the Interstate-
7 15 U.S. Border Patrol Checkpoint, Murrieta, California. Additionally, they were previously driven by
8 defendant from San Diego, California to Oceanside, California, and that defendant knew or acted in
9 reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United
10 States;

11 d. Were paying between \$1500 and \$2000 to others to be brought into the United
12 States illegally and/or transported illegally to their destination therein; and,

13 e. May be released and remanded immediately to the Department of Homeland
14 Security for return to their country of origin.

15 4. After the material witnesses are ordered released by the Court pursuant to this stipulation
16 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
17 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including,
18 but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

19 a. The stipulated facts set forth in paragraph 3 above shall be admitted as
20 substantive evidence;

21 b. The United States may elicit hearsay testimony from arresting agents regarding
22 any statements made by the material witness(es) provided in discovery, and such testimony shall be
23 admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an)
24 unavailable witness(es); and,

25 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
26 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and
27 cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the

1 right to confront and cross-examine the material witness(es) in this case.

2 5. By signing this stipulation and joint motion, defendant certifies that defendant has read
3 it (or that it has been read to defendant in defendant's native language). Defendant certifies further that
4 defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully
5 understands its meaning and effect.

6 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
7 immediate release and remand of the above-named material witness(es) to the Department of Homeland
8 Security for return to their country of origin.

9 It is STIPULATED AND AGREED this date.

10 Respectfully submitted,

11 KAREN P. HEWITT
12 United States Attorney

13 Dated: 1/22/08
14 Eugene S. Litvinoff
15 EUGENE S. LITVINOFF
16 Assistant United States Attorney

17 Dated: 18 January 2008
18 Candis L. Mitchell
19 CANDIS L. MITCHELL
20 Defense Counsel for Alfredo Luis-Tenorio

21 Dated: 18 January 2008
22 Alfredo Luis Tenorio
23 ALFREDO LUIS-TENORIO
24 Defendant

25 **ORDER**

26 Upon joint application and motion of the parties, and for good cause shown,
27 **THE STIPULATION** is admitted into evidence, and,
28 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

26 Dated: 1/22/08
27 Barbara T. Major
28 United States Magistrate Judge

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Alfredo Luis-Tenorio (2)